BCPROGRESSBOARD

ECONOMIC GROWTH THROUGH REGULATORY REFORM

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ECONOMIC GROWTH THROUGH REGULATORY REFORM

Executive Summary

The BC Progress Board, established by Premier Gordon Campbell in July 2001, is an independent panel of 18 senior business and academic leaders. The Board is tasked with benchmarking BC's economic and social performance over time and relative to other jurisdictions. The Board also provides strategic advice to the Premier and the government on ways to improve the economy and provincial social policy supports.

In the course of its work and deliberations, the Progress Board has identified the need for a ***concerted and ongoing approach to regulatory reform*** as an essential ingredient for continuous improvement in overall provincial economic performance. Now that the government has reduced the overall quantum of regulation by over one-third, attention should turn to ongoing sector-by-sector reviews to ensure that BC's regulatory frameworks remain competitive nationally and internationally.

Fundamentally, British Columbia is a small, open, trade-dependent economy. This means that the bulk of provincial income has historically been derived from the sale of marketable exports beyond the province's boundaries. The scale and scope of investments required to develop industries have also made British Columbia dependent on both domestic and out-of-province sources of capital to facilitate the expansion and maintenance of the province's stock of plant and equipment, and human resources.

Regulatory reform is more than just deregulation. Most programs are intended to provide needed public health and safety protection, to protect the environment or to enhance economic efficiency – we would all be worse off if government did not regulate for these purposes. Sometimes a regulatory program is not in the public interest and can be eliminated. In most cases though, regulatory reform involves reviewing regulatory programs to increase effectiveness and reduce costs – in many cases, these can be achieved simultaneously.

Regulatory programs impose three kinds of costs – administrative costs borne largely by taxpayers, compliance costs, borne by those being regulated, and economic costs from lost opportunities or stifled innovation that fall on those being regulated and the economy as a whole. Some costs – particularly economic ones – are hidden and difficult to measure. Nevertheless, it is important that regulatory reform focus on minimizing costs, while maximizing the benefits of regulatory programs.

Sometimes costs are imposed that are completely unnecessary. One example is when different governments or different agencies within a government regulate the same activities. Federal, provincial and local governments all regulate. Coordination and harmonization of overlapping regulation is often difficult to achieve, but has the potential to significantly reduce costs without reducing benefits. The recent BC *Community Charter* has increased the potential for local government regulatory duplication and overlap. Another example is costs caused by delays in regulatory approvals that result from backlogs.

Use of various "process tools" and "instrument tools" to streamline regulatory programs or to provide additional resources can help reduce costs to regulatory authorities and those subject to

regulatory measures. In terms of "process tools", use of cost-benefit analysis, consultation, inter-governmental coordination and harmonization, reform of regulatory administrative cultures, regulatory budgets and performance management, advisory committees, and focused reviews are assessed for their usefulness for the "path forward" in future British Columbia regulatory reform initiatives. In terms of "instrument tools", the use of user (polluter)-pay, time limits and reverse onus, sunset provisions, performance-based regulation, risk-based regulation, and economic incentives are also assessed for their usefulness and applicability for regulatory reform efforts in British Columbia.

The primary conclusions of this paper are that the Government of British Columbia should consider the following measures to expeditiously move forward on further regulatory reform:

- Enduring Political Commitment: The Government of British Columbia should commit itself to the principle of continuous and concerted regulatory reform and to establishing goals and principles against which improvements in the regulatory environment will be measured. This would be usefully enunciated in a public statement or legislation. A senior Minister should be given accountability for this task.

- Oversight Committee – The Government of British Columbia could form an oversight committee comprised of senior government officials (Ministers and Deputy Ministers) also drawing on expertise outside of government where warranted.

- Regulatory Coordination and Harmonization – The Government of British Columbia should consider focusing on reducing and preventing regulatory overlap and duplication within the provincial government and with the federal, other provincial and local governments. This requires setting a high threshold that the provincial government and local governments must meet to show that additional or different regulation is justified where an activity is already regulated by a different agency or government.

- Regulatory Reform Process – The Government of British Columbia should consider building upon focused regulatory reviews already completed or underway by undertaking thorough focused reviews on priority areas, taking into account the features of regulatory reform processes described in this report and regulatory instruments designed to achieve the greatest benefit at minimum cost. It is important that regulatory reform focus on both administrative and policy aspects of regulatory programs. The BC Progress Board suggests that land use regulation be considered as a top priority.

- Regular Progress Reporting: The Government of British Columbia should commit to continuing to report progress on a quarterly basis as presently is the case.

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I. INTRODUCTION

The BC Progress Board, established in July 2001, is an independent panel of 18 senior business and academic leaders tasked with benchmarking BC's performance on measures of economy, innovation, education, environment, health and social condition over time and relative to other jurisdictions. The Board also has a mandate to provide advice on ways to improve BC's economic performance and its social policy supports.

In the course of its work and deliberations, the Progress Board has identified the need for a ***concerted and ongoing approach to regulatory reform*** as an essential ingredient for improvement in overall provincial economic performance. Now that the government has successfully reduced the overall quantum of regulation by one-third, attention should turn to ongoing sector-by-sector reviews to ensure that BC's regulatory frameworks remain competitive nationally and internationally.

Fundamentally, British Columbia is a small, open, trade-dependent economy. This means that the bulk of provincial income has historically been derived from the sale of marketable exports beyond the provinces' boundaries. The scale and scope of investments required to develop industry has also made British Columbia dependent on both domestic and out-of-province sources of capital to facilitate the expansion and maintenance of the province's stock of plant and equipment, and human resources. A related consideration is that the economic development and growth process is complex, and involves a number of interrelated factors. The Progress Board's inaugural benchmarking report, released in early 2002, concluded that regulatory (and tax) policies must be constructed mindful that they are inextricably linked to the economic growth process. In essence, they form the foundation of BC's relative competitive position. In the words of the report:

> An assessment of critical factors in the economic growth process from the perspective of a small trade-dependent, sub-national jurisdiction like British Columbia leads to an important conclusion: to attract the private sector investment necessary for sustained growth to occur, policy makers must pay close attention to cost competitiveness. In particular, taxation and ***regulatory policies*** must be designed with a view to keeping overall business production costs competitive ... competitive taxation and regulatory policies are essential to encourage the investment spending that leads to technological innovation and upgrading, higher productivity and lower unit production costs.

Overall the costs imposed by regulation are significant but are often unpriced or unmeasured, and are usually borne by governments, business, and more often than not in the final incidence, individual citizens. A huge and hidden cost of regulation is that it stifles innovation by focusing business on meeting regulatory demands rather than customer needs. The higher the costs imposed by regulation the less competitive British Columbia is compared to other jurisdictions. That affects not only our ability to sell goods at competitive prices in global markets – crucial in our small open economy – but also our ability to attract investment.

The solution seems simple – reduce the amount of regulation and costs will be reduced and competitiveness improved. However, most regulatory programs are designed to provide important public protection or other benefits that can only be provided by government, such as enhancing public health and safety, environmental protection, or economic efficiency. Sometimes regulatory programs are implemented that do not achieve these objectives, either because they were designed for an inappropriate purpose or because circumstances have changed and the program is no longer relevant. For example, segments of the transportation sector have been deregulated as technology and infrastructure changes eliminated natural monopolies, allowing competitive, relatively unregulated markets to prevail. In those cases, costs can be reduced by eliminating the regulation. However, most regulation is intended to enhance the public interest in some way and simply deregulating would be inappropriate and unacceptable.

In British Columbia, a considerable amount has been done in recent years to reduce the number of unnecessary regulatory requirements on the books. The fact that British Columbia is one of the few jurisdictions to actually count – and from a baseline reduce – regulatory requirements on the books by one-third marks an important milestone. Yet, more remains to be done. The challenge of making British Columbia a leader from a regulatory perspective will require a ***culture of concerted and continuous review and improvement***. Any future reform effort will have to be focused on finding ways to reduce costs while maintaining and, where possible, enhancing the benefits of regulation.

The purpose of this paper is to present a set of tools that could be used to develop a regulatory reform culture and to improve specific regulatory programs by minimizing costs and maximizing benefits. The paper is organized into four sections:

First, for background purposes, we explore the scope, purpose, and cost of government regulation. Every level of government, federal, provincial and local is involved in regulation, an activity which is extremely complex in terms of who regulates and the purpose served, the regulatory instruments used, and the costs incurred.

Second, the paper discusses regulatory reform initiatives undertaken in British Columbia, the recently released report "Smart Regulation – A Regulatory Strategy for Canada" prepared by the federal External Advisory Committee on Smart Regulation, and work undertaken by the Organization for Economic Cooperation and Development (OECD) on regulatory reform.

Third, the paper discusses and evaluates a set of tools that could be used to improve specific regulatory regimes and to effect continuous improvement in British Columbia's competitive position.

Finally, the Progress Board's primary conclusions are that a strong and enduring political commitment to concerted and ongoing review of regulation on a sector-by-sector basis is required and that elimination – or even better, prevention – of unnecessary costs resulting from regulatory overlap and duplication within and between federal, provincial and local government agencies is crucial. There should be clear goals and principles against which improvements in the regulatory environment are measured.

II. THE SCOPE AND PURPOSE OF REGULATION

Regulatory Activities

Governments generally engage in ***regulatory activities***[1] when individual behavior – while rational from the perspective of the person taking the action – could hurt others who have no immediate means of protecting themselves from harm, or could hurt society as whole (i.e. the "public interest"). In those cases, government regulation may be effective in reducing or eliminating harm that might otherwise occur.

Box 1:
Examples of "Public Interest" Objectives in Regulatory Activities

- **Public Health and Safety** – food safety regulation, regulation of pharmaceuticals and medical devices, WCB regulation of workplaces, waste management regulation, air quality regulation, access to Crown land.
- **Environmental Protection** – regulation of salmon habitat by the Department of Fisheries and Oceans (DFO), waste management regulation, access to and activities on Crown and private land (e.g. regulation of resource industries).
- **Economic Efficiency** – price and service regulation of monopolies such as energy distribution and telecommunications, regulation of the financial services sector, regulation of labour markets, local government land use regulation (zoning).

Often, a regulatory activity tries to achieve several objectives at the same time. For example, waste management regulation clearly has both environmental protection and public health and safety objectives. Even more common are circumstances where a regulatory program has more than one specific objective within the broad categories. Multiple conflicting objectives are often unavoidable and are one of the reasons why regulatory reform is complex.

Sometimes government regulation has an objective that does not fall within one of the main categories outlined in **Box 1**. For example, a regulatory program intended primarily to protect an industry from competition may, arguably, not be in the broad "public interest". In other cases, the objective of a program may no longer be relevant because times have changed. Either way, costs can be reduced by eliminating programs or requirements that are not directed towards a legitimate public interest objective.

The first, and perhaps most important question that government must ask when designing a new regulatory program or reviewing an existing one is: "What is the objective and is it in the public interest?" A clear answer to that question will provide a strong foundation for deciding whether regulation is needed and, if so, what the best approach would be.

[1] In other words, for the purpose of this paper, a "regulatory activity" is any intervention by government to "regulate" behaviour. Some of the instruments used to regulate are described below. There is often confusion between "regulatory activity" and "Regulations" which are laws created by the Lieutenant Governor in Council (Cabinet) or another person under the authority of a statute. Sometimes these Regulations are regulatory in nature and sometimes they are not.

Case Study – Balancing Public Interest Objectives With Economic Efficiency
Passenger Transportation Act 2004

The Ministry of Transportation has implemented a series of changes to the way passenger carrier businesses are regulated and licensed in B.C. Passenger carriers include buses (inter-city, charter, sightseeing and tour), taxis and limousines.

These changes were needed to improve the former licensing process that was outdated, overly regulated, and restrictive to new entrants to the industry. The commercial passenger transportation industry needed flexibility to be more competitive and to meet customers' needs, while improving services and maintaining public safety. Further, the *Motor Carrier Act* had not been significantly changed since 1939 with the exception of the deregulation of the trucking and freight industry.

Among the changes introduced, was new legislation in 2004 – the *Passenger Transportation Act*. Under the new legislation, the Motor Carrier Commission was replaced with a new Passenger Transportation Board (PTB), a quasi-judicial body and a new Passenger Transportation Registrar.

Legislative changes will likely reduce approval, administrative and compliance costs. For example, any commercial passenger transportation operators, such as charter and tour buses, with large vehicles that carry 12 people or more will be able to operate any where in the province, charge competitive rates and increase or decrease their fleet size in response to changing business needs without having to seek formal approval from the PTB.

Also, approximately 40% of applications processed by the Motor Carrier Commission will no longer be subject to economic regulation or need Passenger Transportation Board approval through:

- an estimated 15% reduction in the number of applications coming to Registrar or Board than came to the Motor Carrier Commission from reforms such as buses now being able to set their own tariff and time schedules; and,
- an estimated 25% reduction in the number of applications coming to the Board than would go to the Motor Carrier Commission from reforms such as charter and sightseeing applications now being processed by the Registrar as general applications and not subject to economic tests of public need for their service.

For businesses where transportation is incidental to the service being provided, such as hotel shuttles, eco-tours, wine tours, and heli-skiing transfer vehicles, regulatory requirements have been reduced to allow them to adapt more easily to rapidly changing market conditions. Now, they are only required to meet standard safety regulations not specific economic regulations.

The new legislation also continues to protect public safety and improves compliance and enforcement. Public safety issues continue to be addressed through the National Safety Code and the Commercial Vehicle Inspection Program. Dispatch companies or brokers are now required to use licensed taxis. Enforcement of licence conditions against illegal, unlicensed operators were strengthened with the implementation of specific fine amounts of $1,000 to $5,000 for operators who conduct business without a license.

The Authority to Regulate

All three orders of government -- federal, provincial and local -- regulate various activities.[2] The ***Constitution Act, 1867***, divides jurisdiction between the federal and provincial governments, with some areas such as national defense and banking solely within federal control, and some such as education, health care and municipal affairs exclusively within provincial control. Some

[2] An emerging "fourth order" of government rests with individual First Nations. Over time, the scope and purpose of First Nations government will evolve as treaties are concluded. This emerging order of government is beyond the scope of this paper.

are areas – such as environmental protection – of joint jurisdiction. Local governments are "creatures" of the provinces, and derive their authority to regulate from legislation and regulation under provincial jurisdiction.

In many cases, a given activity or business will be subject to regulatory programs of multiple governments and governmental departments/agencies usually with overlapping and/or inconsistent requirements (see example in **Box 2**). In some cases, multiple regulatory programs may be needed to provide protections, but costs could be reduced through coordination and cooperation among jurisdictions. In other cases, multiple regulatory programs provide no incremental benefit and one single program would provide significant cost savings without sacrificing benefits.

Box 2:
Example of Regulatory Overlap – Land Use

Land use is a prime example where overlapping regulation occurs. Depending on where land is located and its proposed use, a variety of governments and agencies could be involved including:

- ***Federal*** (e.g. Department of Fisheries and Oceans, Natural Resources Canada);
- ***Provincial*** (e.g. Ministries of Sustainable Resource Management; Water, Air and Land Protection; Forests; Energy and Mines; Health; Agriculture; and Community, Aboriginal and Women's Services as well as Land and Water BC, among others); and,
- ***Local*** (e.g. municipal and/or regional district regulation of zoning, building permits, business licensing and air and water quality).

With the coming into force of the *Community Charter*, local governments will enjoy a significant increase in their authority to regulate, including areas such as land use, transportation and environmental protection. The power granted by the *Community Charter* raises the possibility of further overlap between federal, provincial and local regulatory requirements, and may enhance the prospect of inconsistent and overlapping regulatory requirements for those operating in more than one municipality.

Regulatory Instruments

There are many different ***regulatory instruments*** that governments use to intervene or influence behavior. At times they are used as stand-alone measures, while at other times are used in combination depending upon the circumstance. The spectrum of regulatory instruments policy makers use ranges from express licensing/permitting to the use of economic incentives to encourage – rather than compel – behaviour desired by policy makers. The main regulatory instruments are listed in **Box 3**.

The regulatory instrument chosen for a particular purpose can have a large impact on both the benefits achieved by regulating and the costs imposed. Regulatory tools described in Box 3 suggest how the choice of regulatory instrument can improve regulatory programs in a variety of ways.

Box 3:
Regulatory Instruments

Licensing – one of the most common approaches to regulation, this requires a license or other form of authorization be obtained before a business or individual activity can be undertaken. For example, those selling financial products such as securities or insurance are required to be licensed. Licensing is usually supported by legislation prohibiting the activity unless the person conducting the activity is either licensed or exempt from licensing. That way, those administering the regulatory scheme know who is undertaking the activity and can monitor their behavior. There are usually requirements that must be met and behavior that must (or must not) occur to avoid regulatory enforcement action, including possible suspension or revocation of the license.

Permitting – differs from licensing because it usually applies to a specific circumstance rather than an ongoing business or activity (although the term "license" may be used interchangeably with the term "permit"). Examples include waste discharge permits, building permits and temporary use permits for a motor vehicle.

Required and prohibited activities – is an approach that may be part of a licensing or permitting scheme or may stand alone as a regulatory measure that applies generally. This is often referred to as "prescriptive regulation" as it directly prescribes how participants must behave and implies the best way of undertaking an activity or, conversely, that it is not acceptable to behave in the manner prohibited. Zoning and land use controls are examples of this type of regulation. Requirements and prohibitions are not all equally prescriptive. For example, a requirement that a firm have a plan to deal with a certain situation is less prescriptive than a requirement that dictates how the firm must deal with a situation.

Ongoing approval – is a form of continuous regulation. This type of regulation is often used where a limited number of firms in an industry are regulated (e.g. monopolies). Firms are required to report regularly and to seek approvals for changes to prices, services, practices, etc. An example is the regulation of broadcasting by the CRTC and regulation of energy utilities by the BC Utilities Commission.

Measurable results compared to a regulatory standard – sometimes called "results-based regulation", refers to regulatory requirements that must be achieved. Measurable indicators such as the maximum level of certain chemicals in waste discharge or minimum levels of capital that a financial institution must maintain to support its operations are good examples. Standards can be set as conditions of licenses or permits, as conditions of exemptions from the need for a license or permit, or as generally applicable requirements. A clear advantage is that measurable results are usually quite objective so it is fairly clear whether or not there is compliance. Examples include recent environmental and forest practices regulation.

Economic incentives – another common approach to encourage or discourage behavior, are often in the form of artificial markets created to associate a price with some activity (such as pollution) that would not otherwise have a market-based cost. Some economic incentives can be imposed through the tax system, while others are more direct. For example, an approach to reducing greenhouse gas emissions by industry is to establish emission limits and a market for trading emissions credits. An industry then has the choice of: meeting their emission target directly; purchasing excess emission reduction credits from someone else; or, achieving emissions below their target and selling the excess emissions to a third party.

Taxation – incorporation of incentives or disincentives in the tax system can be viewed as a form of regulatory instrument, such as tax credits which treat expenditures on research and development differently from other expenses for income tax purposes. Taxes also have regulatory requirements associated with administration, such as requirements to register and to prepare and submit information (tax returns).

Regulatory Costs

Regulatory programs generally impose costs in three ways. To begin with, all regulatory programs require some sort of administration and thus impose ***administrative costs***.

In general, the more intrusive the regulatory program, the greater the administrative costs. And, the more requirements for approval there are and the higher the number of subjective requirements, the more people that will be involved in making ongoing decisions. Regulatory programs that have fewer approval requirements and more objective results-based targets tend to have relatively lower administrative costs.

Administrative costs can also vary considerably depending on the approach taken to administration. If there is very little tolerance for non-compliance, then administration will generally be more expensive. However, if administration is focused on ensuring compliance in cases where the risk of non-compliance is high or the risk of harm to the public interest from non-compliance is significant, then administrative costs will be lower.

Administrative costs are among the easiest to measure and generally receive the greatest scrutiny since they are part of government budgeting and financial reporting processes. While it is important to minimize administrative costs to the extent possible -- consistent with achieving the public interest objectives of the regulatory program -- it is also important to realize that administration can also affect other costs, such as compliance and economic costs. In the final analysis, the overall cost of regulation must be the target of regulatory reform.

Costs of compliance are incurred by those being regulated. While administrative costs are quite easy to measure, costs of compliance are considerably harder to accurately estimate, and are often well in excess of administrative costs. The costs of compliance fall solely on those being regulated and represent a direct reduction in the competitiveness of those regulated (see **Box 4**).

Box 4:
Costs of Compliance: Some Examples

Preparing and Providing Information: such as applications for licenses or permits, regular or special reports and forms that must be completed and submitted, and information required by regulators making on-site inspections.

Direct: these are costs of doing things required by a regulator or a regulatory program, to the extent they differ from what would have been done in the absence of the requirement.

Indirect: indirect costs, such as lost profits, are incurred due to delays in commencing or continuing some business activity while waiting for a regulatory decision.

Penalties: are costs incurred as a result of a failure to comply.

The level of compliance costs for a given regulatory program will depend on both the design of the program (i.e. what information is required, the number of other regulatory requirements, how

prescriptive the program is in forcing activities to be done a certain way, and more generally, how the program is administered).

Compliance costs associated with delays in regulatory approvals are very frustrating for business, especially when the delay is unrelated to the merits of the application, but simply the result of a backlog. Such costs are a pure loss, since they do not contribute in any way to the public interest benefits of the regulatory program.

Box 5:
Checks and Balances For Regulatory Programs

Clear Guidelines: to provide regulators and participants with a full understanding of how regulatory judgment will be applied.

Effective Quality Control: is required within the regulatory organization to ensure that regulators are appropriately supervised, consistency is encouraged and appropriate consideration is given to costs being imposed on those being regulated.

Timely, Effective and Streamlined Appeal Mechanism: the ability to appeal and have inappropriate decisions overturned is critical.

Compliance costs matter both in terms of their expense and how consistent the costs are for those being regulated. The more subjective regulatory requirements are and the more discretion that regulators have, the more compliance costs of different participants are likely to vary reducing the effectiveness of the regulatory program. When regulatory requirements are subjective, it is important that administration be designed with appropriate checks and balances (see **Box 5**) to minimize inconsistency and to ensure the approach to administration does not itself impose an unnecessarily excessive burden.

The ***economic costs*** associated with regulation are often the most difficult to measure and impose the most significant hardship of factors within a regulation program (see **Box 6**). A huge economic cost arises because regulation tends to stifle innovation, focusing effort on compliance with regulations and preventing innovations that would improve service to customers.

In summary, regulatory policy is a complex area, encompassing a wide range of public policy objectives, all orders of government, a wide variety of regulatory instruments, and a broad range of costs and benefits. The complexity involved means that the design and administration of regulatory programs is a constant exercise in achieving and maintaining a delicate balance. That balance requires tradeoffs among program objectives and among regulatory costs to be minimized (or both). Decisions about regulatory programs must often be made with the best available – but less than ideal – information. Given this level of complexity, there is no simple or easy way to reform regulatory programs – each must be carefully reviewed on its own merits. The devil really is in the detail and there is no "right" answer. As a result, effective regulatory reform requires ***commitment to and concerted focus on continuous improvement and to clear goals and principles against which improvement in the regulatory environment can be measured***.

Box 6:
Types of Economic Costs of Regulation

- **Opportunity Costs**: are lost profits that could have been achieved if the regulatory program had not constrained behavior and the participant had been allowed to operate to maximize profit. Lost profit is a direct reduction in the overall size of the economic pie, and is a cost that is borne by the person being regulated (and others).

- **Costs Due to Reduced Innovation**. Regulatory programs, because they constrain the way activities are undertaken, often have the effect of reducing the incentive for participants to find new and more efficient ways of doing things or to develop new products or to innovate. While virtually impossible to estimate, this is nevertheless a real cost to the economy from many regulatory programs. It is a cost borne only in part by those being regulated, with much of it falling on the economy in general.

- **Costs Due to Reduced Competitiveness**. The direct costs of regulatory programs such as administrative costs, compliance costs and opportunity costs all act to reduce the competitiveness of British Columbia participants compared with competitors operating in other jurisdictions. The overall level of competitiveness of an industry is, in turn, a factor in the amount of investment in the industry in British Columbia and the level of economic activity in the Province. This represents a cost to the economy as a whole, especially in a small jurisdiction like British Columbia where much of the economic activity takes place in global markets where competition is fierce.

- **Costs Due to Reduced Economic Efficiency**. Sometimes regulatory requirements impair the way a given market works, with the result there is an overall reduction in the size of the economic pie and misallocation of scarce resources. An example is a licensing program, where the requirement reduces the number of people that would be engaged in an activity compared to the number who would otherwise participate. Licensing may well be required to protect the public from harm in areas such as services provided by health, legal, accounting or financial professionals to ensure licensees have needed skills and training. However, by limiting the number of participants, licensing imposes a cost on the overall economy and benefits those who do have a license.

III. THE EXPERIENCE OF BC AND OTHER JURISDICTIONS

Many governments have made improving regulatory programs and reducing their costs a focus over the past two or three decades, providing considerable experience and examples for the path forward in British Columbia. It is beyond the scope of this report to undertake a comprehensive review of those experiences or the academic literature in this field. However, we briefly examine principles used by the Organization for Economic Cooperation and Development, the Government of Canada and the Government of British Columbia in regulatory reform initiatives.

OECD Regulatory Reform Initiative

Since at least the mid-1990s, the 30 member nation Organization for Economic Cooperation and Development (OECD) has promoted regulatory reform as a key strategy for enhancing economic growth and "public interest" objectives throughout the world. The *OECD Report on Regulatory Reform* released in 1997 remains a respected international blueprint for regulatory reform today. The report's primary recommendations are:

- Adopt at the political level a broad program of regulatory reform that establishes clear objectives and frameworks for implementation.
- Review regulations systematically to ensure they continue to meet their intended objectives efficiently and effectively.
- Ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied.
- Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
- Reform economic regulations (i.e. regulations that restrict entry, exit, pricing, output, normal commercial practices, and forms of business organization) in all sectors to stimulate competition, and eliminate them except where clear evidence demonstrates they are the best way to serve broad public interests.
- Eliminate unnecessary regulatory barriers to trade and investment by enhancing implementation of international agreements and strengthening international principles; and,
- Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

The OECD has undertaken significant work analyzing regulatory reform progress and issues in twenty member countries, including Canada. The work clearly demonstrates the variety and complexity of regulatory policy and reform efforts. The predominant themes include:

- There must be strong ongoing political commitment to regulatory reform for it to be effective. Regulatory reform is not a one-time project, but an ongoing process that must continue indefinitely.

- Regulations must be reviewed to ensure the objective is clear and still relevant, and that the regulatory program is the best way of achieving the objective.

- Economic regulation that is intended to protect industries or distort competitive markets should be eliminated unless there is a clear public interest justification. Wherever possible, competitive markets are preferable to regulated markets.

Government of Canada – Smart Regulation[3] Initiative

The Government of Canada has also been involved with regulatory reform in many ways over the past few decades. The most recent initiative was announced in the 2002 Speech from the Throne, which indicated the government's intention "... to accelerate reforms in key areas to promote health and sustainability, to contribute to innovation and economic growth, and to reduce the administrative burden on business." The federal government established the 10 member External Advisory Committee on Smart Regulation (EACSR) with a requirement to report within 18 months. **Box 7** outlines EACSR's mandate.

Box 7:
EACSR Mandate

(1) Regulatory Strategy for the 21st Century: Within the next 12-15 months, the EACSR will develop a regulatory strategy designed for the 21st century, supporting Canada as a sovereign trading nation offering a high quality of life to its citizens.

(2) Priority Sectors and Areas for Reform: The EACSR will identify priority sectors and areas requiring regulatory reform in order for Canada to have a strategic advantage as noted above.

(3) Current Regulatory Issues: The EACSR will also review and provide an external perspective on current issues identified by departments and stakeholders.

The EASCR issued its landmark report in September 2004, and made 73 recommendations to the federal government on regulatory strategy for Canada, and about how to improve regulation in five key areas or sectors. **Appendix A** outlines the main themes addressed in the report. Initially, the five specific regulatory areas reviewed by the committee were manufacturing and product approval, biotechnology/life sciences, enabling First Nation's economic development, the environmental assessment process, and oil and gas exploration and development.

[3] "Smart regulation" is defined as using a regulatory system to generate social and environmental benefits while enhancing the conditions for a competitive and innovative economy that will attract investment and skilled workers and sustain a high quality of life for Canadians … it is about making regulation as effective as possible and making sure it is never more complicated than it needs to be.

British Columbia

Since 2001, British Columbia has been engaged in two types of regulatory reform exercise:

- The Deregulation Initiative, which included a commitment to reduce regulation by one third within three years and the introduction of a regulatory reform policy for government; and,

- Detailed regulatory program reviews in several areas including regulation of oil and gas activity, forest sector regulation, several environmental regulatory program areas (contaminated sites and environmental permitting, land use planning and other aspects of land use regulation and administration), regulation of the financial sector (financial institutions, securities and real estate) and regulation of public safety in a variety of areas.

The Deregulation Initiative measured the volume of regulations by counting regulatory requirements in provincial law, including both statutes and regulations. As mentioned previously, the Ministry of Small Business and Economic Development is reporting that the commitment to reduce the regulatory requirements by one third within three years has been met. The review has focused the provincial government on regulatory issues and has resulted in the elimination of many regulatory requirements that no longer serve any "public interest" purpose. In addition there is a reform policy which requires that all new laws be reviewed against a check-list (see **Appendix B**). The regulatory checklist is consistent with the recommendations of the OECD regarding regulatory reform. Focused reviews of regulatory programs that apply to industrial sectors -- such as oil and gas regulation, financial services sector regulation and safety regulation -- have gone beyond applying the regulatory reform checklist to new regulatory initiatives, and have undertaken policy reviews for the express purpose of regulatory reform.

Moving forward, the government has committed to a "0" per cent increase in regulation in each of the next four years, along with a commitment to identify further areas for reduction and reform.

IV. TOOLS FOR REGULATORY REFORM

Given the progress made in British Columbia over the past few years, what practical steps should the province take to continue to improve its regulatory programs? In this regard, there are a number of regulatory reform tools that could be considered for implementation in appropriate circumstances.

The following discusses several of these tools and their strengths and weaknesses. The tools have been divided into those that apply primarily to how a regulatory reform process is undertaken and those that relate to the choice of regulatory instrument to fulfill a specific public policy objective.

Regulatory Reform Process Tools

Features of Regulatory Reform Processes

There are several features that are often included in regulatory reform processes, including:

- defining the objective as the first step to determine whether regulatory intervention is justified and if so, what it is intended to achieve;
- considering a variety of options, including use of various alternative regulatory instruments and non-regulatory approaches to achieving the objective;
- evaluating the options in terms of benefits – how effective the option is in achieving the objective – and costs, including consideration of all the costs, even those that cannot be accurately quantified;
- using effective and focused consultations throughout the process to enhance the quality of the information and to build acceptance for change;
- conducting regulatory reform within the context of other regulatory activities of the British Columbia government and of other governments including the federal government, other provinces and local governments to ensure that unnecessary duplication and overlap are avoided;
- ensuring that implementation of the ultimate decision and ongoing administration of the program are focused on achieving the stated objectives at minimum overall cost; and,
- developing appropriate output and outcome indicators that allow performance to be measured over time and transparently report on actual performance compared to expected and prior performance.

Some of these features are included implicitly or explicitly in British Columbia's regulatory checklist or other government policy, such as inclusion of performance management in the fiscal budget/financial reporting process. It would be useful for government to revisit this policy and ensure that all of these features are rigorously applied in its regulatory reform process. A discussion of the merits of each of these tools follows.

Cost/Benefit Analysis

Several jurisdictions require some or all proposed regulatory changes to be subject to formal cost/benefit analysis prior to decisions being made. Like regulatory budgets discussed below, cost/benefit analysis formally forecasts the costs and benefits of a proposed change.

Cost/benefit analysis is difficult because many benefits and costs are hard to accurately measure and the exercise can be expensive and time-consuming. However, it is often easier to quantify incremental costs and benefits than it is to quantify absolute costs and benefits. In many cases, even if a cost or benefit cannot be accurately quantified, an analysis indicating whether or not the cost or benefit is likely to be increased or reduced and who will be affected will provide some guidance to decision-makers.

It is common for jurisdictions that do require formal cost/benefit analysis to limit the requirement to major changes – i.e. the expected impact exceeds a threshold – to ensure that the cost and delay associated with conducting the analysis is justified. It would be useful for British Columbia to consider implementing a requirement for formal cost/benefit analysis where the proposed change is expected to have a significant impact.

Consultation

As indicated in BC's regulatory checklist (Appendix B), transparency in the development of regulatory change is a required part of every regulatory reform process, meaning that those who will be affected by change must be consulted. At its best, effective consultation can be a powerful tool that results in regulatory programs that are more effective in achieving their objective and have a lower cost, the notion being that those affected by a regulatory program are often in the best position to know what will work in practice. Effective consultation can also build acceptance and ownership of change by accommodating legitimate interests where possible and by providing a better understanding of why changes are being proposed.

Effective consultation requires a delicate balance between accommodating legitimate interests, ensuring the public interest remains paramount and keeping special interests from holding inappropriate sway, and preventing complexity from detracting from effectiveness and cost efficiency. It is also important to remember that consultation itself imposes costs. It is often difficult for those affected by proposed changes to devote the resources needed to respond effectively to proposed changes, especially when they are involved in several consultations at once or in quick succession.

Some considerations for the design of effective consultations are:

- consultation is often most effective when the objective is clearly articulated by government at the outset, focusing the discussion on the best way to achieve the desired outcome rather than on what the objective should be;

- ensure those conducting the consultations have the authority to accommodate legitimate interests in the design of the change being considered, where appropriate;

- report back to those who participate showing that the input received was heard and considered and explain the resulting decision or recommendation along with detailed reasons; and,

- where possible, minimize the costs of participating in consultations by ensuring that issues involving similar interested parties are considered together.

Intergovernmental Coordination/Harmonization

As discussed previously, many businesses, industries and activities are subject to regulation by multiple governments and departments within governments. Overlap and duplication of regulatory programs is often cited by those subject to regulation as the most costly feature of the regulatory environment. Coordination of regulatory efforts is often viewed as an effective way of reducing the economic cost of regulation without undermining the effectiveness of the regulatory program.

In the federal Smart Regulation report, considerable attention was devoted to this topic, both in terms of the international and federal-provincial contexts and where different jurisdictions institutions/agencies may have overlapping regulatory requirements. The report recommends the federal government urgently work with provinces and territories on regulatory reform, starting with priority areas of environmental assessment and biotechnology/emergent technologies.

At the provincial level, overlap and duplication arising from different provincial agencies or programs regulating the same activity needs attention, along with federal/provincial and inter-provincial regulatory overlap. As important, though, is the existing overlap between the province and local governments in many areas. With the new *Community Charter* the potential for unnecessary costs due to overlap among local governments and between the province and local government has increased. While a "best practices guide" has been developed by local governments related to new regulatory powers, further mechanisms to minimize costs and encourage greater coordination and cooperation would be beneficial.

The Government of British Columbia should continue efforts to focus attention on regulatory coordination and harmonization at all levels, federally, inter-provincially, within the provincial public sector and with local governments. Harmonization means focusing overlapping regulatory programs on achieving functional outcomes at the least regulatory cost. Consideration should be given to adopting the principle that, where an activity is already regulated by another agency or government, identical regulatory standards and requirements will be adopted unless there is a compelling case for being different. This would establish a high

threshold for new and existing provincial regulatory programs and could be considered as the basis for a test to be applied to new local government regulatory programs.

Case Study - Harmonization
BC Environmental Assessment Process

A new *Environmental Assessment Act* was brought into force on December 30, 2002 which introduced greater flexibility to the system and allowed review procedures to be tailored to the project as well as providing more focus on project reviews.

The former environmental assessment process had been in effect since June 1995 and while it was thorough and balanced, it was highly prescriptive and not conducive to dealing with unique challenges of individual projects. A one-size fits all approach just did not work - the process was too lengthy and costly for both government and proponents. With the changes that have been made, significant process efficiencies and reduced costs have been achieved without sacrificing goals of sustainability, environmental protection, community stability and public health and safety.

Changes include:

- Shifting from a prescriptive to a flexible and customized process that can be tailored to the specific needs of the project;
- A shorter overall review process that places greater responsibility on proponent deliverables;
- Providing more flexibility in designating projects as reviewable; and,
- Greater harmonization through joint sign-off on workplans and review schedules, and through signing a new Canada-British Columbia Agreement on Environmental Assessment Cooperation in March 2004.

Amendments to the *Canadian Environmental Assessment Act* that came into force in 2003 have made it more difficult to harmonize with the British Columbia Environmental Assessment process to avoid overlap and duplication. Changes introduced in the updated Canada-British Columbia Agreement on Environmental Assessment Cooperation approved in 2004 are partially addressing some of these issues, but further changes are needed to federal processes to facilitate harmonization. Work is underway through the Council of the Federation Environmental Assessment streamlining initiative and other processes involving the federal government to reduce impediments to environmental assessment where both jurisdictions are involved.

Reforming the Regulatory Culture

As discussed previously, the manner in which a regulatory program is operated can be as important as the choice and design of regulatory instruments used in determining the benefits and costs of the program. Regulatory reform processes should therefore focus on both reforming policy and administration.

In particular, there are many areas where regulators believe it is their responsibility to ensure that the regulatory objective is met at any cost. In part, this is driven by a culture in which failure to protect – whether, for example, it is consumer protection, environmental protection, appropriate use of Crown land or workplace safety – is not tolerated. People who are attracted to regulatory jobs often have strong personal feelings about the importance of the regulatory objective, to the extent that consideration of economic and compliance costs may seem inappropriate because it effectively puts a value on human life or environmental protection. It is not always – or even

usually – the case that reducing costs also reduces the effectiveness of a program. It is important that administrators strike the appropriate balance.

Introducing appropriate risk management mechanisms -- as discussed below – can often help administrators strike that balance. Sometimes the culture can be affected through training to ensure regulators know what government's objective is and how the regulatory program is intended to achieve it, while minimizing economic costs. The balance can sometimes be addressed by including specific features in the program requiring administrators to consider both the costs imposed by their decisions and the outcome they are trying to achieve. Whatever specific mechanisms are used, it is important that regulatory reform processes consider both policy and administration.

Regulatory Budgets and Performance Management

Regulatory budgets are another mechanism to reduce regulatory costs. A regulatory budget, similar to the annual fiscal budget, would require that a government-wide budget be built quantifying and forecasting the benefits and economic costs of regulatory programs across the government. The purpose is to bring transparency to regulatory programs and, by measuring the activity, to provide an incentive to enhance benefits and reduce costs.

There are two difficulties with this tool. It requires an incredible amount of effort across government to implement regulatory budgets. It would be hard to justify increasing fiscal expenditure for such a purpose and, to the extent the regulatory budgeting process would be funded out of existing budgets, it would divert resources away from other productive uses. It is very difficult and, in some cases, impossible to meaningfully quantify either costs or benefits. Incomplete and inaccurate quantification of costs and benefits can lead to distorted incentives and provide opportunities to justify manipulating the numbers.

However, measurement of performance is a strong motivator and can be effectively applied to regulatory programs short of creating a full blown regulatory budget. ***Performance management*** is a general term for establishing outcome and output indicators for all major programs and measuring over time to encourage continuous improvement. The benchmarking mandate of the BC Progress Board is a good example, though it applies to overall provincial economic and social performance. The Government of British Columbia has implemented performance management across government by requiring performance indicators for all programs, setting performance targets for those indicators, and mandating annual reporting of results. A continued and enhanced focus on regulatory costs and benefits should be considered as part of this ongoing exercise.

Oversight Committee

The Federal External Advisory Committee on Smart Regulation demonstrated the value of using a broadly-based advisory group as a mechanism for developing a comprehensive regulatory reform program. While the government of British Columbia could consider implementing a similar process, the Progress Board believes that enough is known – through federal, provincial and other work (including this report) – about the importance of regulatory reform for economic

growth to set priority areas and continue the job. As discussed throughout this paper, further efforts building on work to date is required to improve regulatory systems in British Columbia. A senior Minister should be charged with overall accountability and oversight, possibly with the assistance of a committee of other relevant senior Ministers and Deputy Ministers.

Focused Regulatory Reviews

Regardless of whether an oversight committee is created, it is suggested that regulatory reform be undertaken largely through ***focused regulatory reviews*** of areas defined either by a specific program area or by the economic sector being affected.

As noted above, over the past several years the provincial government has undertaken focused regulatory reviews in a number of areas with considerable success. In some cases – such as some environmental policy areas and several aspects of land use – while progress has been made, the regulatory reform initiatives are still underway and need to be completed. Land use regulation is a case in point. Given the very high proportion of Crown land (about 94%) and high resource values associated with multiple competing uses, land use is a significant "public interest" issue in British Columbia managed through various regulatory programs. Land use regulation is extremely broad and complex, encompassing planning (i.e. the Land and Resource Management Process and more specific local "zoning" plans for specific Crown land areas), Crown land tenures, regulation of a plethora of natural resource values (eg. timber, subsurface resources, fish and wildlife, biodiversity) tourism, relationships with First Nations, local government zoning, environmental assessment, collection and maintenance of information (including resource inventories), among other regulatory areas.

Urban land use is particularly important because of the enormous value of urban land and the costs involved in making poor land use decisions. Land use is also an area of shared jurisdiction making it possible to have competing levels of government slowing development processes and making approvals costly and slow.

A comprehensive review of land use regulation is suggested to build on work currently underway, and expand the scope of the review. Land use is also an area where there is regulatory overlap among federal agencies (especially but not only DFO), provincial agencies and local governments. To the extent a review is undertaken, an integrated effort involving various agencies and all three orders of government is required. This must include a thorough examination of how regulatory policy is implemented and administered. In particular, the operations of Land and Water BC, a Crown corporation created to manage access to Crown land and water resources, has been the subject of ongoing efforts to speed the process, reduce backlogs and reduce compliance costs. The Progress Board believes this is an area where considerably more effort is required to reduce economic costs and to expedite economic development outside BC's major urban centres.

Other areas that could be considered for focused regulatory reviews include:

- ***WCB*** workplace safety regulation (an area where there is ongoing effort);

- ***Construction*** industry;
- ***Forest industry*** – another area where work is underway, but not yet completed;
- ***Environmental*** regulation including contaminated sites and brown field development, waste management, and remaining areas of environmental permitting – (also the subject of progress over the past several years, arguably with further work still to be done);
- ***Provincial Sales Tax Administration*** – also an area where there is ongoing effort (e.g. the Tax Fairness and Services Code);
- ***Transportation*** – this is an important sector which is subject to overlapping and inconsistent federal, provincial and local regulation; and,
- ***Energy*** – energy is important as both a key input to all that is produced in the province and as a current and potential source of exports. The review should include both existing sources of energy (oil, gas, hydro, coal) and emerging or potential alternative energy technologies and sources.

In each case, the purpose of the focused review would be to continue or complete the process and to ensure objectives are clear, programs achieve desired results, and economic costs are minimized.

Political Commitment to Continuous Regulatory Improvement

There must be strong and enduring ***political and senior staff commitment*** to continuous improvement and regulatory reform. It is a job that will never be done. Treated as an investment, regulatory reform can provide a significant payback and further the broad objective of positioning British Columbia as a highly competitive, small open economy.

Regulatory Instrument Tools

Apart from the process side of regulatory reform, there are a number of "instrument" tools that can be used to effect better regulation. Some of the merits and drawbacks to common instrument tools are discussed below.

User or Polluter Pay

One dimension of administrative costs involves the question of "who pays?". In many cases, fees charged to those being regulated, such as license and permit fees, are used to pay for administrative costs, effectively making administrative costs into compliance costs. This is generally referred to as ***"user-pay"*** or, in the case of some environmental regulation ***"polluter-pay."*** Examples include provincial waste permit fees, local government garbage collection fees

and licensing fees for insurance agents. Compared to the alternative of paying administrative costs from general revenues, user-pay has some obvious advantages for government. In addition, to the extent those being regulated benefit, it is appropriate they should pay some/all of the cost. However, if the objective of a regulatory program is to enhance the "public interest", there is a solid argument that some of the administrative costs of regulation should fall on the general taxpayer who is the ultimate beneficiary. Sometimes fees associated with a regulatory program significantly outweigh the administrative costs of the program. In those cases, the induced compliance costs (i.e. the impact on the cost competitiveness of those being regulated) are greater than the actual administrative costs of the program.

User pay is a useful tool, especially when those being regulated benefit from the activity. However, excessive user fees increase compliance costs and reduce overall competitiveness.

Time Limits and Reverse Onus

As noted above, one common complaint by those being regulated is that unnecessary costs are imposed by bureaucratic delays in making regulatory decisions, especially where they have nothing to do with the merits of the case. One remedy is to put ***time limits*** on regulators and to ***reverse the onus***. Unless the regulator disapproves, the application is deemed to be approved when the time limit expires.

This can be a useful feature of regulatory licensing and permitting regimes. However, it is not always an effective solution to the problem of backlogs and long processing times. If the backlog or delay is caused by lack of resources, establishing time limits and a reverse onus may simply increase the number of applications denied. Alternatively, it may result in some applications without merit gaining approval by default. That reduces the benefits generated by the regulatory program and may affect its credibility.

Other approaches that can be considered to increase the timeliness of regulatory decisions are to:

- review whether or not licensing or permitting is still required, or replace it with a more performance-based approach (see below);
- increase resources – while administrative costs may rise, compliance and economic costs may be reduced. This could be coupled with increased fees generally so that all regulatees pay the cost of the additional resources, or providing a higher fee for expedited service, so that regulatees can decide whether the increased service is worth the increased cost. For example, the provincial Corporate and Personal Property Registries have used this approach for many years;
- introduce a more risk-based approach (see below); and,
- adjust the administrative process to increase efficiency and, therefore, timeliness.

Sunset Provisions

One way of institutionalizing ongoing regulatory reform is to mandate, in legislation, periodic regulatory reviews of specific program areas. This technique is currently used at times and sunset provisions are included in the current BC regulatory checklist (see Appendix B).

A ***sunset provision*** repeals legislation at a specified future date. This effectively requires the legislature to take action to keep the program operating and provides a reason for conducting a regulatory review to determine whether the program is still needed and whether it remains the best way of achieving the objective. Some legislation does not contain a repeal provision *per se*, relying instead on a legislated requirement to review the program at a specified time. This approach can be just as effective.

In setting a timeframe for a future review, it is important to give the current program long enough to become fully operational. The time frame will depend on the nature of the program and how quickly changes in circumstances are expected.

Performance-Based Regulation

Performance-based regulation is a term used in contrast to "command and control" or "prescriptive" regulation to refer to regulatory instruments that rely on achieving established outcomes, rather than specifying how an activity must be undertaken. In many cases, moving away from prescriptive to performance-based regulatory requirements can reduce costs in a number of ways.

First, consider administrative costs. If the standard can be expressed in a definitive and easily measurable way, administrative costs may be reduced through automated monitoring systems. However, this is not always possible, and sometimes movement from a prescriptive to a performance-based regulatory requirement will actually make it more difficult to determine if there is compliance. For example, in various environmental regulatory areas where a scientific basis for establishing a specific outcome standard exists and the technology is readily available to measure compliance, changes yield some of the greatest reductions in administrative costs.

Second, consider compliance costs. Like administrative costs, compliance costs will be affected most where there is a definitive, easily measured regulatory standard. Where the standard is less definitive – such as capital adequacy requirements for financial institutions with a clear measurable minimum but a discretionary power for regulators to require more capital depending on risk -- compliance and administrative costs may be increased by demands for information needed by regulators to make a proper assessment.

Third, the largest impact from moving to more performance-based regulation is usually in terms of lower economic costs. Prescriptive regulation imposes relatively high economic costs, as it tends to stifle innovation and to distort markets more than performance-based regulation. In designing performance-based regulatory requirements it is crucial to ensure the regulatory standard is a direct measure of whether the objective of the program is being met. It is also

important the standard be set at an appropriate level, as discussed below under Risk-Based Regulation.

The BC regulatory checklist requires consideration of performance-based regulation, as it should. It is important that careful consideration be given to the design and implementation of performance-based regulatory requirements.

Case Study – Results-Based Regulation
Forest Range and Practices Act, 2004

The *Forest Practices Code (1995)* (FPC) was primarily a planning-based regime intended to consider impacts to forest and environmental values, and mitigate them prior to forest development and management activities. The FPC achieved its original objective of creating a level playing field for all forest licencees, increasing environmental protection and applying consistent enforcement measures. However, it required a high number of transactions between industry and government, and focused on process instead of results which unintentionally increased costs for both industry and government. To address these issues, the Ministry of Forests initiated a move to results based legislation in 2001.

Change was implemented in two phases:

1) The *Forests Statutes Amendment Act, (No. 2) 2002* was given Royal Assent on November 26, 2002 and made amendments to the existing Forest Practices Code. These amendments came into force on December 17, 2002 and provided immediate efficiencies and streamlining in planning and practices; and, 2) The *Forest and Range Practices Act* and associated regulations (FRPA) came into force on January 31, 2004 – replacing the *Forest Practices Code of British Columbia Act* and associated regulations and policies. The new results-based Code includes a transition period over which industry and government personnel will change from the FPC to FRPA. After the December 31, 2007 transition period is over, the new Act and regulations – by focusing on practices on-the-ground – will likely reduce regulatory requirements from the existing *Forest Practices Code* considerably. For example, under FRPA, the main planning document required of most tenure holders is a comprehensive forest stewardship plan. This replaces three operational plans required previously and eliminates 18 approval steps.

FRPA sets clear objectives for conservation of key values, including fish and wildlife habitat, biodiversity, soil and water. It also makes licensees accountable for delivering forest practices that are consistent with those objectives. Professional foresters, agrologists, biologists, engineers, geoscientists and other experts are charged with applying their knowledge, training and expertise to ensure resource management decisions are based on the best available science. The FRPA is backed up with a rigorous compliance and enforcement regime and stiffer penalties for non-compliance.

Risk-Based Regulation

It is usually impossible for a regulatory program to be 100% successful in achieving compliance. However, in most cases, the objectives of a regulatory program can be met without there being 100% compliance. Viewed in this way, virtually every regulatory program can be seen as a risk management program. Applying this perspective to regulatory reform is a useful way to achieve the appropriate balance among competing objectives and between costs and benefits. Risk management approaches can be applied to both the design of regulatory instruments and to the administration of regulatory programs.

For example, the fiscal budgeting process limits the resources of regulators requiring choices about where and how those resources are applied. One approach is to essentially divide existing resources equally across all regulated activity, effectively giving those being regulated equal attention. While it may be the fairest approach, it may not be the most effective or have the least overall cost. Another approach is to devote limited resources to situations where the regulator's activities are most likely to have the greatest impact in achieving the desired objective. In other words, target areas where the risk of non-compliance or of harm resulting from non-compliance are the greatest.

To implement risk-based administration in a regulatory program requires legislation and policy, and a companion requirement that the regulator be willing and capable of assessing the risk. For those regulatees that pose the least risk, compliance and economic costs are often reduced and those posing the greatest risk have an incentive to improve. In cases where lack of timely approval is imposing unnecessary opportunity costs, movement to a more risk based approach may allow regulators to more effectively use scarce resources, resulting in more timely decisions.

Case Study – Risk-Based Regulation

Financial Institutions Commission (FICOM) - Supervision for B.C. Regulated Financial Institutions

Prior to the introduction of risk-based regulation, the Financial Institutions Commission's (FICOM) regulation focused on ensuring that financial institutions had complied with various statutes and met financial benchmarks. Each institution was regulated in the same manner and shouldered the same regulatory burden no matter how well run. Compliance-based regulation did not take into account individual circumstances.

Risk-based regulation focuses on the circumstances of each institution. FICOM requires each institution to assess its own risk, and provide plans for addressing these risks. Well run institutions then face less regulatory attention as regulatory resources are focused on riskier institutions. The public is better protected because weaker financial institutions are more closely monitored.

The introduction of a new risk-based supervisory framework for regulated financial institutions began in 2002 when a FICOM working group produced a draft framework that covered credit unions, insurance companies and trusts. The framework was developed in modules with specific categories of risk identified.

In support of implementing a risk-based framework, FICOM's Examinations department and Credit Unions and Trusts department were merged, and responsibility for insurance examinations transferred to the insurance department. This reorganization provided for:

1) the integration of off-site monitoring with on-site examinations with responsibility for both activities placed in single departments;
2) the substitution of the old compliance based examination models with new, risk-based guidelines; and,
3) new incentives to rely on team-based oversight and professional judgement.

Professional upgrading and training for FICOM staff was provided in support of the new framework.

In Spring 2003, risk profiles for all regulated institutions were developed and presentations to industry groups on the new approach were completed.

By 2004, Risk Assessment Reports were issued to credit unions and provincial trust companies following their on-site reviews. These reports identify the areas of risk that are of concern to FICOM. In response, a financial institution that receives a report is required to identify steps/programs that it will introduce to mitigate the identified risks. These actions by the financial institution are monitored and reviewed by FICOM.

A risk-based supervisory framework dramatically changes the role of a financial services regulator. With this approach, regulatory staff monitor each institution on an ongoing basis and focus on the key risks that a particular institution faces, rather than tracking compliance with statutes and regulations at predetermined intervals.

One explicit application of risk management is the use of the "***precautionary principle***." Usually associated with environmental and public health regulation, the precautionary principle provides that where there is uncertainty about the scientific basis for regulation, standards and discretionary decisions of regulators should err on the side of precaution. In other words, the regulator is allowed to effectively "hedge" the possibility that future scientific knowledge may determine that the risk to the environment or public health is greater than previously determined. Precaution can be applied both in the setting of standards and the application of discretion by regulators in administering regulatory programs.

The use of the precautionary principle is important and appropriate in many circumstances. However, its abuse as an excuse for not allowing activities even when the risk is not significant based on the best available science can impose significant unnecessary regulatory costs and damage the credibility and acceptability of regulatory programs.

Establishing the appropriate balance in applying the precautionary principle is often very difficult in practice. The government should consider defining the precautionary principle in government policy, specifying which regulatory standards and administrative decisions should be based on the precautionary principle and establishing mechanisms for determining the best available science in those situations.

Economic Incentives

Economic incentives are an alternative or, in some cases, a complement to regulatory requirements, influencing behaviour by sending economic signals. Economists tend to view problems solved by regulatory programs as "market failures". In some cases, that is because there is some situation where a free market will not result in appropriate behaviour by those involved (e.g. a monopoly which causes prices to be too high and the amount of product produced to be too low). In other cases, the private market may not generate an appropriate price for an activity, negatively affecting the public interest, (i.e. such as pollution or public safety).

In some cases, appropriate behaviour can be induced by creating a mechanism that establishes a price or creates another economic incentive – such as a tax – to change behaviour. An example is the introduction of tradeable credits for greenhouse gas emissions. Combined with limits on emissions, this creates a market and a price for reductions in greenhouse gas emissions. A company can decide whether to meet the requirement, to reduce emissions by more than required and recoup some of the cost by selling the excess reduction credits on the market, or reduce emissions by less than required but meet the requirement by purchasing credits on the market. Overall emissions will be reduced at the least economic cost, since each regulated company will make a business decision about how best to meet their requirements. Innovation is encouraged rather than stifled and opportunity costs are minimized.

Economic incentives can be difficult to design and implement and are not feasible in many situations. However, consideration should be given to introducing economic incentives where possible as a mechanism to minimize costs, while maximizing regulatory program benefits.

V. SUGGESTIONS FOR MOVING FORWARD IN BRITISH COLUMBIA

In conclusion, the Government of British Columbia should consider the following measures in its efforts to move forward on continuous and concerted regulatory reform:

1. Enduring Political Commitment: The Government of British Columbia should commit itself to the principle of continuous and concerted regulatory reform and to establishing goals and principles against which improvements to the regulatory environment are measured. This could be usefully enunciated in a public statement or legislation. A senior Minister should continue to be accountable for this work.

2. Oversight Committee – The Government of British Columbia could form an oversight committee comprised of senior government officials (Ministers and Deputy Ministers) drawing on expertise outside government where warranted.

3. Regulatory Coordination and Harmonization – The Government of British Columbia should consider a focus on reducing and preventing regulatory overlap and duplication within the provincial government and with the federal, other provincial and local governments, including setting a high threshold that provincial and local governments must meet to demonstrate that additional or different regulation is justified where an activity is already regulated by another agency or government.

4. Regulatory Reform Process – The Government of British Columbia should consider thorough and focused reviews on priority areas, taking into account the features of such processes described in this report and regulatory instruments designed to achieve the greatest benefit at minimum cost. It is important that regulatory reform focus on both administrative and policy aspects of regulatory programs. The BC Progress Board suggests land use regulation be considered as a top priority.

5. Regular Progress Reporting: The Government of British Columbia should commit to continuing to report progress on regulatory reform on a quarterly basis as presently is the case.

Appendix A:
Smart Regulation Executive Summary Excerpt

What Needs to be Improved?

- **The importance of getting our national house in order.** The harshest criticism of current regulatory practice is the lack of cooperation and coordination between federal government departments and among federal, provincial and territorial governments. From the average consumer to the largest multinational enterprise, the Committee heard that governments need to stop fighting over jurisdiction and find ways to work together on behalf of citizens and industry.

- **The need for a more strategic international regulatory approach.** International cooperation is increasingly necessary to provide high levels of consumer, social and environmental protection. It is no longer possible to protect Canadians' health and safety and provide access to innovative products — and do it all ourselves. From a business perspective, Canada must be more strategic in its regulatory relations with trading partners. A key irritant for industry is the proliferation of minor differences between Canadian and American regulations, given an increasingly integrated North American market. Minimizing these differences would remove wasteful duplication and reduce costs for consumers, industry and government.

- **The value of other perspectives.** The Committee's deliberations were enriched and informed by the involvement of consumer, industry, Aboriginal and environmental voices. While governments have a central responsibility to maintain the regulatory system, they need the input and insights of businesses, non-governmental organizations and other stakeholders to ensure that the system is relevant and effective.

- **The necessity for more cost-effective, timely processes.** The Committee heard repeatedly that the government takes too long to design regulations and complete approvals. Slowness is sometimes equated with higher protection. In a fast-paced environment, however, a sluggish process can have grave implications for human and animal health. It can be the determining factor in a small Canadian business remaining viable or international investment leaving Canada in favour of a more streamlined regulatory environment elsewhere.

- **More focus on results.** Increasingly, many regulatees have the knowledge and capacity to meet regulatory goals without the need for detailed prescriptions about how they should do it. With the right monitoring and assessment strategies in place, Canada can and should be more bold in its use of performance-based regulations and other alternative instruments.

- **Better performance and accountability measurement.** The government's stakeholders want much more emphasis placed on performance and accountability in the future. The Committee found that there is no systematic review of federal regulations to determine if they are still doing the job intended, including whether they are based on the latest scientific developments, as well as their effect on citizens and businesses. The regulatory process should encourage continuous improvement. Regulators must be clear and transparent with Canadians about the results they want to achieve and how they will measure them. There must also be recourse — an independent third party — for when normal processes fail.

- **The need for cultural change.** The recommendations in the report, and the expectations of stakeholders, cannot be addressed by tinkering with the process. A major change in approach is needed, supported by training for government regulators and the commitment and drive of senior bureaucrats and parliamentarians.

Appendix B: British Columbia Regulatory Checklist	
Regulatory Criteria	**Issues to Consider:**
1. Reverse Onus: Need for Regulation is Justified	Has the public policy problem been defined? Is government intervention necessary to address the problem? Is it clear that regulation is preferred to other alternatives to address the public policy problem?
2. Regulatory Design is Results-Based	Does the design reflect government's commitment to regulation that is results-based, using scientific evidence and, where feasible, market incentives to achieve compliance and regulatory objectives?
3. Transparent Development of Regulatory Requirements	Have interested parties had an opportunity to present their views during the development of the regulatory requirements? Have the views of interested parties had any impact on the final design of the regulatory requirements?
4. Cost-Benefit Analysis	• If the regulatory requirements will impose a significant compliance burden, has a formal cost-benefit analysis of the legislation or regulation been completed? • If a formal cost-benefit analysis is not required, have the impacts of the legislation or regulation been analyzed?
5. Competitive Analysis Completed	Has the impact of the proposed regulatory requirements on British Columbia's economic competitiveness been assessed? Have the regulatory requirements been compared with equivalent regimes in other relevant jurisdictions (e.g., Alberta, Ontario, Washington State)?
6. Avoid or Eliminate Duplication with Other Jurisdictions	Do the regulatory requirements avoid or eliminate duplication or overlap with requirements imposed by the federal or local governments?
7. Timeliness of Regulatory Response	Have steps been considered to ensure that those who administer the regulatory requirements will respond in a timely way to those who are affected by the requirements?
8. Plain Language	Have the regulatory requirements been drafted in plain language?
9. Sunset Review and Expiry Provisions	Is there a Sunset Review provision (Default Option) and a Sunset Expiry provision? If not, what are the reasons why either provision cannot or should not apply to the regulatory requirements?
10. Replacement Principle Applied	Are two regulatory requirements eliminated for every new regulatory requirement to be introduced by the legislation or regulation?

Appendix C: Board Members, Staff, and Advisory Group Members

Members:

Mr. David Black, Chair
President
Black Press Ltd.

Mr. Alex A. Campbell
Chair
Thrifty Foods

Mr. Herman Driediger
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